

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ELOISA MARQUEZ, RICHARD MARTINEZ,
DESTINEY MARTINEZ and ANDRELLITA MARTINEZ

Plaintiffs,

Case No.: 1:15 CV 00787 KBM-LF

vs.

OFFICER NICHOLAS LEVINE, in his official capacity as
a commissioned law enforcement officer and individual capacity,
OFFICER RYAN KUEHL, in his official capacity as a
Commissioned law enforcement officer and individual capacity,
And the NEW MEXICO STATE POLICE DEPARTMENT,

Defendants.

**STATE DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING
PERSONNEL FILES OF OFFICERS LEVINE AND KUEHL, AND INTERNAL
AFFAIRS REVIEW FILE REGARDING CASE NO. 13-181250**

COME NOW the Defendants Officer Nicholas Levine, Officer Ryan Kuehl and New Mexico State Police Department (collectively “State Defendants”), by and through its attorneys of record, SaucedoChavez, P.C. (Christopher T. Saucedo and Frank T. Apodaca), and pursuant to Fed. R. Civ. P. 26(c), and hereby state the following in support of their Motion for Protective Order:¹

1. State Defendants object to the disclosure of the Personnel Files and Internal Affairs Review File Regarding Case No. 13-181250 (hereinafter “Internal Documents”) while

¹ As required by D.N.M.LR-Civ. 7.1(a), On November 2, 2015, Plaintiffs’ counsel was provided with a copy of this motion and with a corresponding order. As of the date of filing, Plaintiffs’ counsel has not consented to the motion in the form offered, and efforts at further compromise by the parties’ counsel have not resulted as of the time of filing in an agreed motion or form of order. Accordingly, the present motion is filed as an opposed Motion.

Plaintiffs contend that these documents are discoverable. See Denver Policemen's Protective Ass'n v. Lichtenstein, 660 F.2d 432 (10th Cir. 1981).

2. Notwithstanding, the State Defendants agree to produce the Internal Documents (with redaction of home addresses, home phone numbers, and social security numbers), subject to the following terms and conditions:

- A. Plaintiff and his respective attorney of record will return the contents of the Internal Documents file at the resolution of this lawsuit;
- B. Plaintiff and his respective attorney of record will purge all copies of the contents the Internal Documents at the resolution of this lawsuit;
- C. Plaintiff and his respective attorney of record will not disclose or produce the contents of the Internal Documents to any non-party at any time, except for investigators, any experts and/or consultants retained by the parties in this matter;
- D. Plaintiff and his respective attorney of record will not attach any of the contents of the Internal Documents as exhibits to depositions or to motions filed with this Court unless the depositions or motions are sealed.
- E. As the Internal Documents become known to State Defendants, State Defendants reserve the right to object to the disclosure of privileged documents constituting psychotherapist-patient communications, work product, attorney-client communication, or documents that they assert would violate an officer's right to privacy. Furthermore, as these documents become known to State Defendants, disclosure and claims of privilege may be made. Any such claims of privilege may be challenged by Plaintiffs in accordance with the Federal Rules of Civil Procedure.

F. Plaintiff and his respective attorney of record will only use the information contained in Internal Documents for purposes of this lawsuit only and agree that this information is not to be used or disclosed in any other proceedings, litigation, depositions, and/or hearings which are not a part of this action.

G. State Defendants will produce all Internal Documents presently known to State Defendants within three (3) days of the date of entry of this order, and will supplement such production on a rolling basis as to all further Internal Documents as they become known to State Defendants.

WHEREFORE, State Defendants respectfully request that the Court enter a protective order which complies with the agreed upon foregoing terms and conditions.

Respectfully submitted by:

SAUCEDOCHAVEZ, P.C.

By: /s/ Frank T. Apodaca

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Attorneys for State Defendants

I hereby certify that the foregoing was filed electronically through the EFS system on November 13, 2015 which caused counsel of record to be served by electronic means:

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